

(b) REMARKS:

The claims are 1-13 with claim 1 being the sole independent claim.

Reconsideration of the claims is requested in view of the remarks which follow.

Claims 1- 13 were rejected as anticipated by Yano EP '475. Claims 1-13 were also rejected as an obviousness-type double patenting over claims 1-17 of U.S.P. 7,153,622 (Honma '622). The Examiner argues the PHA copolymers claimed are the same in both patents and both are used in a toner. The rejections are respectfully traversed.

Applicants will briefly review certain key features and advantages of the present claimed invention prior to addressing the grounds of rejection. The present claimed invention is a charge control agent which controls the charge of toner powder or granules and is a specific polyhydroxyalkanoate. The charge control agent improves the chargeability of a toner for electrophotography, enhances the charge level and is stable over time. The agent acts to provide clear toner images with improved image density, reduced fog and enhanced transferability. See Tables 1-5.

The charge control agent is typically used by combining it with a toner binder resin and a wax, melting and kneading the resin, wax and agent and, thereafter, dispersing coloring agents, pigments, magnetic materials and the like therein and pulverizing. See page 61, line 21 to page 62, line 20. Alternatively, the binder resin and control agent can be combined in a solvent and precipitated, dried, pulverized and, thereafter, pigments and other additives are dispersed therein. See page 63. Further, a monomeric binder resin, charge control agent, waxes, pigments and other additives can be dispersed, suspension polymerized and recovered. See page

63. Finally, the charge control agent can be added to colored fine toner particles and fixed to their surface. See page 64.

Initially, it should be clear that EP '475 and Honma '622 share the same Japanese priority applications, JP 2001-133728 and JP 2001-210021 and share a common inventive entity. Their disclosures are essentially identical. See, for example, Figs. 5-13 of Honma '622 which are identical to Figs. 1-9 of EP '475. The discussion of Honma '622 which follows is applicable to EP '475.

Honma '622 in Cols. 14 and 15 teaches a polyhydroxyalkanoate (PHA) which coats, as a shell, a core, which is a pigment. Col. 14, lines 46-55 and Col. 15, lines 25-37. The PHA provides the pigment with strength and chemical and heat resistance. The resulting microcapsule can be finely dispersed in a toner as a colorant to further enhance flowability, stability and toner performance. See Col. 16, lines 7-32. Therefore, the construct is an improved colorant for a toner. In Col. 93, lines 3-18 Honma '622 teaches that a conventional charge control agent is added to the toner constituents, including the PHA-coated pigment, by mixing with the binder or by attaching the charge control agent to the surface of the toner. In Example 33 in Col. 110 of Honma '622, the binder, PHA-coated colorant and a separate charge control agent (Hoechst WXVP 434) are admixed. The same disclosure is found in EP '475, See [0033], [0172], [0175] and [0271], for example. Accordingly, Honma '622 and EP'475 distinguish between a PHA-coated pigment which is used as a colorant and a charge control agent which is added to the colorant in the resin-wax mix to control charging characteristics. This teaches the artisan that the PHA-coated colorant is not a charge control agent and does not act to control

charge, but only to assist in dispersing and coating the colorant.

Therefore, Yano (EP'475) fails as an anticipation, since it does not teach the PHA charge control agent of present claims 1-6; nor a toner binder containing a PHA charge controlling agent as in claim 7; nor a toner containing a binder, colorant and separate PHA charge control agent as in claim 8. To the contrary, Yano '475 merely teaches a colorant at least partly covered with PHA (as a microcapsule) which is the colored pigment of the toner; See Yano, Fig. 8. Yano teaches a separate charge control agent is required for the toner particle.

Not only is Yano distinguishable, but it is not prior art. Applicants have enclosed a certified English translation of the claims of Japanese priority application JPA2002-310249, filed October 24, 2002. A certified copy of JPA 2002-310249 is in the present filewrapper. The translation of the claims demonstrates support for present claims 1-13. Accordingly, Yano, having been obviated, fails to anticipate the claimed invention.

Honma '622 claims a construct of PHA and a base material which is separately claimed as a pigment or dye (claims 12-14). Honma '622 fails to claim a PHA charge control agent, a toner with a PHA charge control agent and a colorant or a charge controlling method and apparatus for image forming employing a PHA charge control agent, a binder and a colorant. Therefore, since there is no conflict, the double patenting rejection should be withdrawn.

The claims should be allowed and the case passed to issue.

Applicant's undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

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